

**General Information Letter:** Presence of employees within Illinois.

March 30, 1998

Dear:

This is in response to your letter of February 24, 1998. Department rules require that the Department issue two types of letter rulings, private letter rulings (**PLRs**) and general information letters (**GILs**). For your general information we have enclosed a copy of 2 *Ill. Adm. Code 1200* regarding letter rulings and other information issued by the Department.

Although you have requested a PLR, the nature of your questions and the information provided require that we respond with a **GIL**. Specifically, the Department will not issue a PLR regarding an anonymous taxpayer. **GILs** are designed to provide background information on specific topics, however, **GILs** are not rulings that are binding on the Department. By contrast, **PLRs** are binding on the Department.

In your letter, you state in part as follows:

Facts

The Company is an S corporation for Federal income tax purposes as defined by Internal Revenue Code ("IRC") 1361. The Company is incorporated in New Jersey and its sole office location is within New Jersey. It does not have any corporate locations within Illinois. In addition, the Company has individual shareholders ("owner") who are not residents of Illinois and do not conduct any business activities within Illinois.

The Company provides its customers with leased employees who are considered detailmen. Generally, detailmen visit doctor's offices and other medical facilities to promote a pharmaceutical product. Such promotion consists of encouraging sales, explaining products' usage and other product information, providing samples owned by the Company's customer, and answering questions relating to the products. The ultimate purpose of the visits is to recommend purchases of these products. The Company's employees do not call on customers within the state to collect on delinquent accounts. They do not accept returned merchandise or make adjustments on that merchandise. In addition, they do not pick up damaged or out of-date-merchandise or make adjustments for those products. The employees do not authorize credit for existing or potential customers, nor do they investigate complaints by customers within Illinois. The employees do not receive purchase orders or make "spot sales" of samples that they carry with them. They do not accept or secure deposits or down payments, nor do they collect installment payments for purchased merchandise. The employees do not repossess products or perform any inspection of products. The employees do not set up merchandising or advertising displays, nor do they arrange cooperative advertising arrangements with their customers. They do not conduct training courses or schools for their

customers, agents, or distributors. In addition, they do not hold meetings, handle complaints, trouble shoot, or give advice to potential customers. Lastly, no deliveries are made into Illinois by the Company since the Company is detailing products for its customers. It is the Company's customers that handle deliveries, and all related activities. The Company has no presence in Illinois except for the activities of the detailmen.

We are requesting a letter ruling that will hold that the detailmen activities of the Company's leased employees that are performed on behalf of its customers within Illinois are not nexus-bearing activities for corporate or individual income tax purposes.

In your letter, you are asking whether your company has the requisite connection (nexus) with the State of Illinois, to be subject to Illinois income taxation. The determination of nexus is extremely fact-dependent. As a result, the Department declines to issue private letter rulings on the issue of whether a particular taxpayer has nexus with the State of Illinois. Such a determination may only be made in the context of an audit where the Department's auditor would have access to all relevant facts and circumstances.

Under Section 201 of the Illinois Income Tax Act [IITA], a tax measured by net income is imposed on a corporation for the privilege of earning or receiving income in this State IITA Section 201. (Illinois imposes a tax directly on subchapter S corporations under IITA Sec. 201(c) and non-resident shareholders of S corporations may be subject to Illinois income tax on their shares of the Illinois taxable income of the S corporation. IITA Sec. 308). However, out-of-state ("foreign") corporations whose only activity within Illinois consists of the mere solicitation of orders for items of tangible personal property, which orders are accepted or rejected outside of Illinois, and if accepted are filled from inventories maintained outside of Illinois by shipment or delivery from those inventories to the customer within Illinois, are not subject to Illinois income tax because of the application of Public Law 86-272.

If a corporation is engaged in a business other than the sale of tangible personal property, this "mere solicitation" standard does not apply, and solicitation activities will make it liable for income and the additional replacement income tax for the entire year. The business income would be apportioned to Illinois under Section 304 of the Illinois Income Tax Act pursuant to a three factor formula based upon the corporation's Illinois property, payroll and sales (with the sales factor double-weighted) versus the total property, payroll and sales everywhere IITA Section 304.

Because the taxpayer in this case is not engaged in the sale of tangible personal property, but is leasing its employees, the presence of its employees in Illinois is not an activity protected by P.L. 86-272.

In situations not governed by Public Law 86-272, Illinois takes the position that a foreign corporation is subject to income taxation if any of its business or nonbusiness income is apportionable or allocable, in whole or in part, to Illinois under the provisions of Section 301 through 304 of the Illinois Income Tax Act.

You should be aware that Section 502(a)(2) of the Illinois Income Tax Act requires that a corporation which is authorized to do business in this State, and is required to file a Federal income tax return will be required to file an

Illinois income tax return regardless of whether the corporation is liable for Illinois income tax. IITA Section 502.

The determination of whether a corporation is a foreign corporation that is required to be authorized to do business in Illinois is made by the Illinois Secretary of State. You may wish to contact the Secretary of State at the following address:

Honorable George Ryan  
Secretary of State  
Business Services Department  
Howlett Building, Room 328  
Springfield, IL 62756

Very truly yours,

Jackson E. Donley  
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